IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4418 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T COPRN

Versus

DHARMSINHBHAI L RABARI 3RD SPECIAL LAND ACQUISITION

Appearance: MR KS JHAVERI for the Petitioner.
MR GK RATHOD for Respondent No. 1
RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2002

ORAL JUDGEMENT

The petitioner-Corporation has challenged the Award passed by the Presiding Judge, Labour Court, Ahmedabad, in Reference (LCA) No.990 of 1997. The learned Labour Judge partly allowed the Reference of the workman by setting aside the dismissal order passed by the S.T. Corporation and the Labour Court has passed an order of reinstatement, with 60% back wages with all other consequential benefits.

At the relevant time, the respondent was serving as a bus driver in the S.T. Corporation. On the relevant day, while he was on duty on 9.5.1995 on the bus which was travelling on the route Shiroli-Ahmedabad, an

unfortunate accident took place and in view of the head-on collision with a jeep, six passengers occupying the said bus died on the spot and two passengers died later on. Ultimately, in the said tragic incident, 8 people lost their lives.

In view of the said incident, the petitioner was subjected to departmental enquiry. During the enquiry, the Enquiry Officer came to the conclusion that the petitioner was contributorily negligent, as, if he had taken proper care, this accident could have been avoided. The Corporation, therefore, passed the aforesaid order of dismissal. Ultimately, the concerned workman raised the aforesaid Industrial Dispute which was referred to the Labour Court at Ahmedabad. The Labour Court, ultimately, came to the conclusion that it is not possible to believe that the accident occurred in view of the negligent driving on the part of the concerned workman and having found that there is no evidence to prove the misconduct of the concerned workman, the impugned order of reinstatement, with 60% back wages was passed by the Labour Court.

Mr.Jhaveri, appearing for the petitioner-Corporation, very strenuously argued that the view taken by the Labour Court is absolutely unsustainable in law. It is submitted that in the departmental proceedings, which is properly held, the aforesaid misconduct against the concerned workmen is proved. He Submitted that because of the aforesaid act of the said workman, eight innocent people lost their lives and not only that, the S.T. Corporation was subjected to payment of compensation to the tune of about Rs.16,00,000/-. He submitted that even the past record of the concerned workman was absolutely unsatisfactory and because of his rash and negligent driving, the S.T. Corporation has suffered a loss in view of the accident, which had occurred due to the negligent driving of the Conductor. The said past record is produced at page 31 of the compilation.

Mr.Rathod, on the other hand, has strenuously argued that the criminal court acquitted the respondent. He submitted that even assuming that the respondent-workman was contributorily negligent, is no ground to dismiss him from service. He submitted that, in the facts and circumstances of the case, the order of reinstatement with 60% back wages is required to be confirmed.

I have heard the Advocates of both the sides. I

have also gone through the Award of the Labour Court.

It is required to be noted that in the departmental enquiry, on available evidence on record, the Enquiry Officer came to the conclusion that if the respondent utilised his expert knowledge and if he had taken reasonable care, this accident could have been averted. Under these circumstances, it was found that the respondent was also negligent and accordingly, he was dismissed from service.

It is required to be noted that at the time of admitting this matter, this Court had stayed the entire Award. However, prior to that, since the S.T. Corporation had already reinstated the concerned workman on his original post, by way of complying with the award of reinstatement, ultimately, the said relief was modified and the same is now confined only qua back wages. Since the Corporation has already taken the respondent back in duty, and the Court is now informed that the concerned workman had retired on attaining the age of superannuation on 28.2.2001, the order of reinstatement is now not required to be interfered with, as, now, there is no peril of recurrence of such incident, since the petitioner has already retired from service. However, in my view, this is not a case in which any back wages can be awarded to the petitioner. There are two circumstances for modifying the said order of back wages, firstly because even in the enquiry, it is found that the respondent was contributorily negligent for the accident in question and even on the basis of past record, which is produced here, and which was also produced before the Labour Court by the S.T. Corporation, this is not a case in which even though any order for reinstatement, if at all was required to be taken, no Award of back wages could have been granted in favour of such an employee. It is the say of the Department that if the driver had taken reasonable care and if he had utilised his knowledge, then the situation could have been saved. Mr.Rathod has also fairly submitted that the finding of the Disciplinary Authority to the effect that the respondent-workman was also guilty of contributory negligence seems to be correct. He further submitted that, in the past, only once or twice, he was found to have been involved in such type of negligence. Considering the rival submissions and considering the record and circumstances of the case, in my view, this is not a case in which any back wages could be awarded to the respondent-workman. Under the circumstances, the order of the Labour Court is partly modified and while confirming the order of reinstatement

with continuity of service, the order regarding back wages is quashed and set aside. The net effect is, the respondent is ordered to be reinstated in service, with all benefits of continuity of service, etc., except payment of back wages for the interim period.

It is clarified that in view of the aforesaid order, the respondent-workman also will be entitled to his periodical increments for the intervening period as if he was in actual service. It is needless, therefore, to say that what is denied to him is payment of back wages during the intervening period.

Petition is allowed. Rule is made absolute accordingly, with no order as to costs.

5th July, 2002 (P.B. Majmudar, J.)

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(apj)